

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re N.C., a Person Coming Under the
Juvenile Court Law.

H033668
(Monterey County
Super. Ct. No. J43522)

MONTEREY COUNTY DEPARTMENT
OF SOCIAL SERVICES &
EMPLOYMENT SERVICES,

Plaintiff and Respondent,

v.

H.C.,

Defendant and Appellant.

Appellant H.C., mother of N.C., an autistic child, appeals from a juvenile court jurisdictional and dispositional order pursuant to Welfare and Institutions Code section 300.¹ On August 21, 2008, the Monterey County Department of Social Services and Employment Services (Department) filed a petition pursuant to section 300, alleging that appellant had had a psychotic break and was hospitalized and that his father was incarcerated and could not arrange for the care of the child. The petition also alleged that the Santa Barbara Sheriff's Department had reported allegations of neglect and abuse of

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

methamphetamines in the family home where appellant lived with her twin sister and sister's son as well as the maternal grandmother. The petition also revealed that the maternal grandmother reportedly had five CPS referrals dating back to 1997 when appellant was a minor.

On August 22, 2008, at the detention hearing, appellant denied the allegation in the petition but the court ordered the child detained. The Department's jurisdictional/dispositional report recommended that the petition be sustained, that the child be declared a dependent of the court, that custody be removed from appellant and that she be offered reunification services. After a hearing, the court adopted the Department's recommendations in their entirety, declared the child a dependent of the court, removed the child from appellant's custody and ordered that reunification services be provided to appellant. This timely appeal ensued.

We appointed counsel to represent appellant in this court. Appointed counsel has filed an opening brief which states the case and the facts but raises no specific issues. (*In re Sade C.* (1996) 13 Cal.4th 952 (*Sade C.*)). In the opening brief, counsel acknowledged that this court has no duty to independently review the record pursuant to *People v. Wende*,² but requested that we allow appellant the opportunity to submit a brief in propria persona pursuant to *Conservatorship of Ben C.*, (2007) 40 Cal.4th 529, 543-544 (*Ben C.*). The Department sent a letter informing us that they would not be filing a response brief.

In *In re Sara H.* (1997) 52 Cal.App.4th 198 (*Sara H.*), analyzing the Supreme Court's reasoning in *Sade C.*, we held that the proper course of action in a juvenile dependency case, where counsel finds no meritorious appellate issue upon scrutiny of the record, is to deem the appeal abandoned and to dismiss it. (*Id.* at pp. 201-202.) We held that we do not have discretion to review the record, under any circumstance. (*Id.* at

² *People v. Wende* (1979) 25 Cal.3d 436.

p. 201.) The two foundational principals underlying the holdings in both *Sara H.* and *Sade C.* are the need for speedy resolutions in dependency cases, and the recognition that independent review of the record causes intolerable delay. (*Ibid.*) Despite these holdings, appellant's counsel urges us to adopt the procedure articulated in *Ben C.* In *Ben C.* the Supreme Court held that where counsel has filed a no issue brief in a conservatorship proceeding, before dismissing the appeal as abandoned, the appellant should have the opportunity to submit a supplemental letter brief in propria persona. (*Ben C.*, *supra*, 40 Cal.4th at p. 544, fn. 6.)

Although *Ben C.* was a conservatorship proceeding, the rights implicated in a dependency proceeding are, at least, equally fundamental. Further, in the past, where counsel in a dependency case was preparing to file a "no issue" letter pursuant to *Sade C.*, we have allowed the appellant to file a motion to vacate the appointment of counsel so that they could file a brief in propria persona. We have often granted these motions, recognizing the fundamental nature of the rights at stake in dependency appeals as well as the due process implications of allowing an appellant adequate access to the appellate court.

Realistically, the process of allowing the appellant to file a motion to vacate counsel's appointment and then file a supplemental brief, as we have done in the past, would likely take as long if not longer than directly notifying the appellant that he has the right to file a supplemental brief. Therefore, there is no actual prejudice to the dependent child due to any delay caused by allowing the appellant an opportunity to file a supplemental brief in propria persona. In balancing the due process interests of the appellant with the child's need for expeditious finality, we find that appellant should be afforded an opportunity to file a supplemental letter brief in propria persona.

Based on this conclusion, we notified appellant of her right to submit written argument in her own behalf within 30 days. On March 27, 2009, we received a letter from appellant in response to our notice. In her letter, appellant wishes to "set the record

straight.” While in the letter, appellant disputes the validity of the allegations underlying the petition and expresses her love and concern for her son, she fails to raise any issue which may be arguable on appeal. Therefore, we find no need to request further briefing in response to this letter.

The appellant having failed to raise any issue on appeal, the appeal must be dismissed as abandoned. (*Ben C.*, *supra*, 40 Cal.4th 529; *Sade C.*, *supra*, 13 Cal.4th 952.)

DISPOSITION

The appeal is dismissed as abandoned.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.